

HOUSE BILL 767

By Lamberth

AN ACT to amend Tennessee Code Annotated, Section 55-18-105; Title 56 and Section 61-2-105, relative to insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Insurance Modernization Act."

SECTION 2. Tennessee Code Annotated, Section 56-2-208(b)(1)(A), is amended by deleting the language "subdivisions (b)(2)-(7)" and substituting instead the language "subdivisions (b)(2)-(8)".

SECTION 3. Tennessee Code Annotated, Section 56-2-208(b)(1)(B), is amended by deleting the language "subdivision (b)(8)" and substituting instead the language "subdivision (b)(9)".

SECTION 4. Tennessee Code Annotated, Section 56-2-208(b)(6)(B)(iv), is amended by deleting the language "the commissioner as its" and substituting instead the word "an".

SECTION 5. Tennessee Code Annotated, Section 56-2-208(b)(8)(A)(ii), is amended by deleting the language "commissioner or a designated attorney" and substituting instead the language "secretary of state".

SECTION 6. Tennessee Code Annotated, Section 56-2-208(b)(8)(B), is amended by deleting the language "subdivision (b)(8) shall not" and substituting instead the language "subdivision (b)(9) does not".

SECTION 7. Tennessee Code Annotated, Section 56-2-208(b)(9)(D), is amended by deleting the language "subdivision (b)(9)" and substituting instead the language "subdivision (b)(10)".

SECTION 8. Tennessee Code Annotated, Section 56-2-208(b), is amended by adding the following as a new subdivision (8) and renumbering the existing subdivisions accordingly:

(8)

(A) For purposes of this subdivision (b)(8):

(i) "Covered agreement" means an agreement:

(a) Entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (31 U.S.C. §§ 313 and 314);

(b) That is currently in effect or in a period of provisional application; and

(c) That addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state, or for allowing the ceding insurer to recognize credit for reinsurance; and

(ii) "Reciprocal jurisdiction" means a jurisdiction that satisfies one (1) of the following criteria:

(a) A non-U.S. jurisdiction that is subject to an in-force covered agreement to which the United States is a party or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union;

(b) A U.S. jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program; or

(c) A qualified jurisdiction, as determined by the commissioner pursuant to subdivision (b)(6)(D), that does not meet the criteria of subdivisions (b)(8)(B)(i)(a)(1) or (2), and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner by rule.

(B)

(i) Credit is allowed when the reinsurance is ceded to an assuming insurer that satisfies each of the following conditions:

(a) The assuming insurer:

(1) Has its head office in, or is domiciled in, a reciprocal jurisdiction; and

(2) Is licensed in a reciprocal jurisdiction;

(b) The assuming insurer has and maintains, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of the assuming insurer's domiciliary jurisdiction, in an amount set by the commissioner by rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, then the assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts set by the commissioner by rule;

(c) The assuming insurer has and maintains, on an ongoing basis, the minimum solvency or capital ratio, as applicable, set by the commissioner by rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, then the assuming insurer must have and maintain, on an ongoing basis, the minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is licensed;

(d) The assuming insurer agrees to provide adequate assurance to the commissioner, in a form specified by the commissioner by rule, that:

(1) The assuming insurer will provide prompt written notice and explanation to the commissioner if the assuming insurer falls below the minimum requirements of subdivisions (b)(8)(B)(i)(b) and (c), or if any regulatory action is taken against the assuming insurer for noncompliance with applicable law;

(2) The assuming insurer consents in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may require an assuming insurer to include consent to service of process in each reinsurance agreement. This subdivision (b)(8)(B)(i)(d)(2) does not limit or in any way alter the capacity of parties to

a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent those agreements are unenforceable under applicable insolvency or delinquency laws;

(3) The assuming insurer consents in writing to pay, wherever enforcement is sought, any final judgment obtained by a ceding insurer or its legal successor that is enforceable in the jurisdiction where the judgment was obtained;

(4) Each reinsurance agreement includes a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

(5) The assuming insurer confirms that it is not presently participating in any solvent scheme of arrangement involving this state's ceding insurers, and, if the assuming insurer enters into a solvent scheme of arrangement, agrees to notify the ceding insurer and the commissioner and to provide security in an amount equal

to one hundred percent (100%) of the assuming insurer's liabilities to the ceding insurer, which must be in a form consistent with subdivision (b)(6), § 56-2-209, and any rules promulgated by the commissioner;

(e) The assuming insurer or its legal successor provides to the commissioner, upon request, on behalf of itself and any legal predecessors, certain documentation specified by the commissioner by rule;

(f) The assuming insurer maintains a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set by rule;

(g) The assuming insurer's supervisory authority confirms to the commissioner on an annual basis that, as of the preceding December 31 or the annual date on which that information is statutorily reported to the reciprocal jurisdiction, the assuming insurer is in compliance with the requirements set forth in subdivisions (b)(8)(B)(i)(b) and (c); and

(ii) This subdivision (b)(8)(B) does not preclude the assuming insurer from providing the commissioner with information on a voluntary basis.

(C)

(i) The commissioner shall timely create and publish a list of reciprocal jurisdictions.

(ii) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions, in accordance with a process specified by the

commissioner by rule, if the commissioner determines that the jurisdiction no longer meets the criteria for a reciprocal jurisdiction. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer that has its home office or domicile in that jurisdiction is allowed, if otherwise allowed pursuant to this section, § 56-2-207, and § 56-2-209.

(D) The commissioner shall timely create and publish a list of assuming insurers that satisfy the conditions in this subdivision (b)(8) and to which cessions are granted credit in accordance with this subdivision (b)(8). The commissioner may add an assuming insurer to this list if a jurisdiction accredited by the National Association of Insurance Commissioners adds the assuming insurer to a list of assuming insurers that satisfy the conditions in this subdivision (b)(8) or if, upon initial eligibility, the assuming insurer submits to the commissioner the information required under subdivision (b)(8)(B)(iv) and complies with any additional requirements that the commissioner imposes by rule, except to the extent that the rules conflict with an applicable covered agreement.

(E)

(i) If the commissioner determines that an assuming insurer no longer meets one (1) or more of the requirements under this subdivision (b)(8), then the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subdivision (b)(8) in accordance with procedures established by rule.

(ii) If the commissioner suspends an assuming insurer's eligibility, then no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit, except to the extent

that the assuming insurer's obligations under the contract are secured in accordance with § 56-2-209.

(iii) If the commissioner revokes an assuming insurer's eligibility, then no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and in accordance with § 56-2-209.

(F) If subject to a legal process of rehabilitation, liquidation, or conservation, the ceding insurer or its representative may seek and, if determined appropriate by the court in which the proceedings are pending, obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(G) This subdivision (b)(8) does not limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this section, § 56-2-207, § 56-2-209, or other applicable law.

(H)

(i) Credit taken under this subdivision (b)(8) applies only to reinsurance agreements entered into, amended, or renewed on or after the effective date of this subdivision (b)(8), and only with respect to losses incurred and reserves reported on or after the later of:

(a) The date on which the assuming insurer meets all eligibility requirements pursuant to subdivision (b)(8)(B); or

(b) The effective date of the new reinsurance agreement, amendment, or renewal.

(ii) This subdivision (b)(8)(H) does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subdivision (b)(8), if the reinsurance qualifies for credit under this section, § 56-2-207, and § 56-2-209.

(iii) This subdivision (b)(8) does not authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement.

(iv) This subdivision (b)(8) does not limit or in any way alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

SECTION 9. Tennessee Code Annotated, Section 56-5-106(d), is amended by deleting the language ", and at least annually thereafter on March 1".

SECTION 10. Tennessee Code Annotated, Title 56, Chapter 54, is amended by deleting the chapter.

SECTION 11. Tennessee Code Annotated, Section 56-13-102, is amended by adding the following as a new subdivision:

() "Parametric insurance" means a type of insurance that does not indemnify the pure loss, but ex ante agrees to make a payment upon the occurrence of a triggering event;

SECTION 12. Tennessee Code Annotated, Section 56-13-103(a)(8), is amended by deleting the language "; and" and substituting instead a semi-colon.

SECTION 13. Tennessee Code Annotated, Section 56-13-103(a)(9), is amended by deleting the period and substituting instead the language "; and".

SECTION 14. Tennessee Code Annotated, Section 56-13-103(a), is amended by adding the following as a new subdivision (10):

() Any captive insurance company, except for a risk retention group, may provide parametric insurance policies, which are considered contracts of insurance for purposes of this title.

SECTION 15. Tennessee Code Annotated, Section 56-13-105(a)(5), is amended by deleting the period and substituting instead the language ", or not less than one hundred thousand dollars (\$100,000) at the core level, so long as each individual protected cell establishes and maintains unimpaired paid-in capital and surplus of not less than twenty-five thousand dollars (\$25,000).".

SECTION 16. Tennessee Code Annotated, Section 56-13-108(c), is amended by deleting the language "A pure captive insurance company or an industrial insured captive insurance company" and substituting instead the language "A captive insurance company, except for a risk retention group,".

SECTION 17. Tennessee Code Annotated, Section 56-13-108(c)(1), is amended by deleting the language "one hundred and eighty (180)" and substituting instead the language "seventy-five (75)".

SECTION 18. Tennessee Code Annotated, Section 56-2-501, is amended by deleting the section.

SECTION 19. Tennessee Code Annotated, Section 56-2-502, is amended by deleting the language "§§ 56-2-503 and 56-2-504" and substituting instead the language "§ 56-2-503".

SECTION 20. Tennessee Code Annotated, Section 56-2-503(a), is amended by deleting the language "the commissioner its" and substituting instead the word "a".

SECTION 21. Tennessee Code Annotated, Section 56-2-503(b), is amended by deleting the subsection and substituting instead the following:

(b) If the company does business in this state, as defined in § 56-2-502, without having appointed a true and lawful attorney, as required in this part, it is, by doing business in this state, deemed to have appointed the secretary of state its true and lawful attorney for the purposes set forth in this part.

SECTION 22. Tennessee Code Annotated, Section 56-2-504, is amended by deleting the section.

SECTION 23. Tennessee Code Annotated, Section 56-2-506(c), is amended by deleting the language "by or on behalf of the commissioner" wherever it appears.

SECTION 24. Tennessee Code Annotated, Section 56-2-103(a)(3), is amended by deleting the subdivision and substituting instead the following:

(3) It files notice with the commissioner of its agent upon whom all lawful process in any action or legal proceeding against it may be served;

SECTION 25. Tennessee Code Annotated, Section 56-2-106(a)(4), is amended by deleting the subdivision.

SECTION 26. Tennessee Code Annotated, Section 56-2-602(a), is amended by deleting the language "commissioner and the commissioner's successor or successors in office" and substituting instead the language "secretary of state".

SECTION 27. Tennessee Code Annotated, Section 56-2-603, is amended by deleting the section.

SECTION 28. Tennessee Code Annotated, Section 56-2-604, is amended by deleting the section.

SECTION 29. Tennessee Code Annotated, Section 56-5-110(d)(1)(B), is amended by adding the word "and" after the semi-colon.

SECTION 30. Tennessee Code Annotated, Section 56-5-110(d)(1)(C), is amended by deleting the subdivision.

SECTION 31. Tennessee Code Annotated, Section 56-5-111(d)(1)(C), is amended by deleting the subdivision.

SECTION 32. Tennessee Code Annotated, Section 56-6-803(d)(2), is amended by deleting the language "shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this part for designation of service of process upon unauthorized insurers; and also".

SECTION 33. Tennessee Code Annotated, Section 56-7-1104(b), is amended by deleting the language "commissioner" and substituting instead the language "secretary of state".

SECTION 34. Tennessee Code Annotated, Section 56-13-103(b)(4), is amended by deleting the language "; provided, that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served".

SECTION 35. Tennessee Code Annotated, Section 56-13-404(b)(5), is amended by deleting the language ". If the registered agent, with reasonable diligence, is not found at the registered office of the SPFC, the commissioner shall be an agent of the SPFC upon whom any process, notice, or demand may be served".

SECTION 36. Tennessee Code Annotated, Section 56-14-112(a), is amended by deleting the language "the commissioner shall" and substituting instead the word "to".

SECTION 37. Tennessee Code Annotated, Section 56-15-103, is amended by deleting the language "the commissioner".

SECTION 38. Tennessee Code Annotated, Section 56-16-116, is amended by deleting the section and substituting instead the following:

Each attorney of a domestic reciprocal who files the declaration required by § 56-16-201, and each attorney of a foreign or alien reciprocal who applies for a license to

transact the business of insurance in this state, shall file notice of the reciprocal's agent upon whom all lawful process against the reciprocal may be served.

SECTION 39. Tennessee Code Annotated, Section 56-16-204(a)(2)(B), is amended by deleting the language "the commissioner" and substituting instead the word "an".

SECTION 40. Tennessee Code Annotated, Section 56-19-118(a)(3), is amended by deleting the language "the commissioner its" and substituting instead the word "an".

SECTION 41. Tennessee Code Annotated, Section 56-25-701, is amended by deleting the section and substituting instead the following:

Every society authorized to do business in this state shall appoint in writing its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in the writing that any lawful process against it which is served on the attorney must be of the same legal force and validity as if served upon the society, and that the authority must continue in force so long as any liability remains outstanding in this state.

SECTION 42. Tennessee Code Annotated, Section 56-35-109, is amended by deleting the section and substituting instead the following:

Any foreign title insurance company desiring to transact a title insurance business in this state must first file with the commissioner written notice appointing an agent for the purpose of acknowledging or receiving service of process and upon whom process may be served, in all proceedings that may be instituted against the company in any court of this state.

SECTION 43. Tennessee Code Annotated, Section 56-45-104(a)(3), is amended by deleting the language "the commissioner as its" and substituting instead the word "an".

SECTION 44. Tennessee Code Annotated, Section 56-50-103(g), is amended by deleting the language "or the applicant has filed with the commissioner the applicant's written

irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner".

SECTION 45. Tennessee Code Annotated, Section 56-55-112(a), is amended by deleting the word "commissioner" and substituting instead the language "secretary of state".

SECTION 46. Tennessee Code Annotated, Section 55-18-105(b)(2), is amended by deleting the language "or, in lieu thereof, the commissioner".

SECTION 47. Tennessee Code Annotated, Section 61-2-105(c), is amended by deleting the subsection and substituting instead the following:

(c) Whenever a domestic or foreign limited partnership authorized to do business in this state is an employer within the meaning of the Workers' Compensation Law, compiled in title 50, chapter 6, and that limited partnership is, for the purpose of workers' compensation, self-insured or a part of a self-insurance pool as provided in title 50, chapter 6, part 4, that limited partnership shall, for workers' compensation actions only, appoint the secretary of state as its true and lawful attorney upon whom all lawful process in any action or legal proceeding may be served.

SECTION 48. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 49. For purposes of rulemaking, this act takes effect upon becoming a law, the public welfare requiring it. Sections 2-8 and 11-47 of this act take effect July 1, 2021, the public welfare requiring it. All other sections of this act take effect upon becoming a law, the public welfare requiring it.